

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 857

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Jane E. Powdrell-Culbert

AN ACT

RELATING TO TRADE PRACTICES; ENACTING THE TRUTH IN MUSIC
ADVERTISING ACT; PROHIBITING CERTAIN CONDUCT; PROVIDING FOR
INJUNCTIVE RELIEF AND PAYMENT OF COSTS AND RESTITUTION;
ESTABLISHING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Truth in Music Advertising Act".

Section 2. DEFINITIONS.--As used in the Truth in Music
Advertising Act:

A. "performing group" means a vocal or instrumental
group seeking to use the name of another group that has
previously released a commercial sound recording under that
name;

B. "recording group" means a vocal or instrumental

.165751.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 group at least one of whose members has previously released a
2 commercial sound recording under that group's name and in which
3 the members have a legal right by virtue of use or operation
4 under the group name without having abandoned the name or
5 affiliation with the group; and

6 C. "sound recording" means a work that results from
7 the fixation on a material object of a series of musical,
8 spoken or other sounds regardless of nature of the material
9 object, including a disk, electronic media, tape or
10 phono-record, in which the sounds are embodied.

11 Section 3. FALSE ADVERTISING.--It is unlawful for a
12 person to advertise or conduct a live musical performance or
13 production in this state through the use of a false, deceptive
14 or misleading affiliation, connection or association between a
15 performing group and a recording group. This section does not
16 apply if any of the following apply:

17 A. the performing group is the authorized
18 registrant and owner of a federal service mark for that group
19 registered in the United States patent and trademark office;

20 B. at least one member of the performing group was
21 a member of the recording group and has a legal right by virtue
22 of use or operation under the group name without having
23 abandoned the name or affiliation with the group;

24 C. the live musical performance or production is
25 identified in all advertising and promotion as a salute or

.165751.1

underscored material = new
[bracketed material] = delete

1 tribute;

2 D. the advertising does not relate to a live
3 musical performance or production taking place in this state;
4 or

5 E. the performance or production is expressly
6 authorized by the recording group.

7 Section 4. RESTRAINING PROHIBITED ACTS.--

8 A. Whenever the attorney general or a district
9 attorney has a reason to believe that a person is advertising
10 or conducting or is about to advertise or conduct a live
11 musical performance or production in violation of Section 3 of
12 the Truth in Music Advertising Act and that proceedings would
13 be in the public interest, the attorney general or district
14 attorney may bring an action in the name of the state of New
15 Mexico against the person to restrain by temporary or permanent
16 injunction that advertisement or conduct.

17 B. Whenever a court issues a permanent injunction
18 to restrain and prevent violations of the Truth in Music
19 Advertising Act as authorized in Subsection A of this section,
20 the court may, in its discretion, direct that the defendant
21 restore to a person in interest any money or property, real or
22 personal, that may have been acquired by means of a violation
23 of that act, under terms and conditions to be established by
24 the court.

25 Section 5. PENALTY.--A person who is found by a court to

.165751.1

underscoring material = new
[bracketed material] = delete

1 have violated Section 3 of the Truth in Music Advertising Act
2 is liable to the state for a civil penalty of not less than
3 five thousand dollars (\$5,000) nor more than fifteen thousand
4 dollars (\$15,000) per violation, which civil penalty shall be
5 in addition to any other relief that may be granted under
6 Section 4 of that act. Each performance or production declared
7 unlawful by Section 3 of the Truth in Music Advertising Act
8 shall constitute a separate violation.

9 Section 6. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2007.